U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12032700

Date: NOV. 27, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a martial arts athlete, seeks classification as an individual of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that he had received a major, internationally recognized award, or, in the alternative, met at least three of the ten initial evidentiary criteria for this classification. We dismissed the Petitioner's subsequent appeal of that decision. The Petitioner than filed a combined motion to reopen and motion to reconsider, which we also dismissed.

The matter is now before us on a second combined motion to reopen and reconsider. On motion, the Petitioner submits a statement in which he asserts that he meets all requirements for this classification. He also submits new evidence along with copies of previously submitted evidence.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motions.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). We interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition.

A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. See 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition or the dismissal of the appeal. Instead, the filing is a motion to reopen and reconsider our most recent decision.

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability who have earned sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability, and whose entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner must submit evidence that either establishes a one-time achievement (that is, a major, internationally recognized award) or meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. ANALYSIS

The issue before us is whether the Petitioner has submitted new facts to warrant reopening or established that our decision to dismiss his first motion to reopen and reconsider was based on an incorrect application of law or USCIS policy.

A. Procedural History

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that he had received a major, internationally recognized award, or, in the alternative, that he

satisfied at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(v)(i)-(x). Specifically, the Director found that he met none of those criteria. After a de novo review of the record, we reached the same conclusions and dismissed the Petitioner's appeal.

The Petitioner then filed a combined motion to reopen and motion to reconsider. We dismissed the motion to reconsider because the Petitioner did not submit a brief or other statement with his motion or otherwise contend that we had incorrectly applied the law or USCIS policy in our appellate decision. The Petitioner's motion to reopen was supported by new evidence related to the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (vi), and a reference letter that attested to his sustained acclaim in his field. However, we determined that the new evidence did not establish his eligibility or overcome the conclusions we reached in dismissing his appeal.

The Petitioner now submits a second combined motion to reopen and reconsider, which includes a brief, new evidence and copies of evidence that was previously submitted. He asserts that the new evidence establishes that he meets the criteria related to lesser nationally or internationally recognized awards, membership in associations which require outstanding achievements, published materials about him and relating to his work, and his performance in leading or critical roles for organizations or establishments that have a distinguished reputation. See 8 C.F.R. § 204.5(h)(3)(v)(i), (ii), (iii) and (viii).

A. Motion to Reopen

In support of his motion to reopen, the Petitioner submits a new letter from [redacted] of the [redacted] National Karate Federation [redacted], the national federation of the sport as recognized by the [redacted] National Olympic Committee, and the World and European Karate Federations. [redacted] discusses the Petitioner's membership on the [redacted] National Karate Team, notes some of the competitions in which he participated and asserts that his performance on the team was "leading and critical." Therefore, it appears that his letter is intended to address the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii) and the leading and critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The criterion at 8 C.F.R. § 204.5(h)(3)(ii) requires a petitioner to provided evidence of membership in associations in the field which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The Petitioner previously submitted a letter from [redacted] President [redacted] confirming his membership with the [redacted] and the [redacted] national karate team, but that letter did not elaborate on the requirements for these memberships and therefore did not establish that his membership on the [redacted] national team satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii). Instead, the Petitioner had relied on a letter from [redacted] Vice President of the [redacted] Karetedo Federation [redacted]. While [redacted]'s letter provided some information regarding the procedures used by [redacted] to select the [redacted] national karate team, we emphasized in our decision that [redacted] is not a representative of [redacted] and that the record did not include official [redacted] rules or other documentation describing the selection process and the qualifications of those who determine membership.

[redacted]'s letter is more detailed than that previously provided from former [redacted] President [redacted] but not does elaborate on the selection process for [redacted] national team members.

Therefore, it does not overcome our previous determination that the record lacks evidence that membership on the team requires outstanding achievements as judged by recognized national or international experts. The Petitioner also re-submits s letter and offers his own explanation of the 's national team selection process. However, absent independent evidence from the the entity responsible for making selections, the Petitioner has not established that his membership on the team meets all elements of the meets the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner also relies on the letter from in support of his claim that he performed in a leading or critical role for the and the national karate team. We previously determined that, while the Petitioner claimed to meet the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii), he had not submitted evidence from the in support of his claim, nor had he submitted evidence to establish that the or the national karate team enjoys a distinguished reputation.

In his letter, states that the Petitioner's individual gold medal at the Karate World Championships," held in 2014, was critical to the team's bronze medal at this event. He also more generally states that the Petitioner's "performances have been contributing to the overall standing and ranking of the team during various competitions." While the record contains evidence related to the Petitioner's participation in a competition in 2014, it does not support 's claim that this was a world championship event in karate, that the Petitioner won a gold medal at the event, or that the national karate team received a bronze medal at the event.

The Petitioner submitted a certificate dated 2014 indicating that he was "the champion of the private championships of boys for showing excellent results in the Tournament of Military Arts" held at the school in Japan. The certificate, which was in Japanese, was not accompanied by an acceptable English translation as the translator did not indicate that he translated the document from the Japanese language.

The record also contains an article from the website of the Karate-do New Zealand about the Anniversary Festival held in 2014. According to this article, teams from 10 countries (including attended the festival, which included a World Tournament" featuring individual and team competitions. There are no official results from the event and the article does not mention the performance of the team or the Petitioner. Therefore, the evidence does not support s assertion that the Petitioner's performance led the national team to a bronze medal at this event or that this event was the "world championship" in his sport.[1] The new evidence does not establish that the Petitioner has performed in a leading or critical role with the or the national karate team. Further, the new evidence does not address our determination that the Petitioner did not establish that the national karate team enjoys a distinguished reputation in the sport.

[1] The record includes a screenshot of the Petitioner's athlete profile from the World Karate Federation (WKF) which lists his results in events which award point values that contribute towards an athlete's WKF competitor ranking. This evidence shows that the Petitioner competed for at the WKF's 2016 World Championships in (among other qualifying competitions) but he did not win any matches or place at that event. The 2014 'world championship" mentioned by does not appear among the qualifying events listed.

In addition to [redacted]'s letter, the Petitioner has submitted new evidence for consideration under the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). Specifically, the Petitioner submits a letter from [redacted], host of the [redacted] television program [redacted] states that the Petitioner was featured in an episode of the program that aired on [redacted] Second channel in February 2020 and was watched by more than 125,000 viewers. His letter is accompanied by a transcript from the program. However, even if we considered this evidence sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), we note that this television appearance occurred nearly two years after the date the petition was filed and cannot establish that the Petitioner met the eligibility requirements at the time of filing as required by 8 C.F.R. § 103.2(b)(1).[2] The Petitioner has not submitted any new evidence related to this criterion that pre-dates the filing of the petition and has not overcome our previous determination that he did not meet the published materials criterion.

For the reasons discussed above, while the Petitioner has submitted new evidence in support of his motion, he has not submitted evidence that establishes his eligibility under any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Accordingly, we will dismiss the motion to reopen.

C. Motion to Reconsider

In order to warrant reconsideration, the Petitioner must establish that our decision to dismiss his previous combined motion to reopen and reconsider was based on an incorrect application of law or USCIS policy and was incorrect at the time of that decision.

As noted, we dismissed the previous motion to reconsider because the Petitioner did not provide a brief or statement in support of his motion and therefore did not "state the reasons for reconsideration" as required by 8 C.F.R. § 103.5(a)(3). Although the Petitioner has submitted a statement in support of the current motion, he does not contend that we misapplied the law or USCIS policy in dismissing the previous motion to reconsider or in assessing the new evidence submitted in support of his first motion to reopen.

The Petitioner cannot establish grounds for reconsideration by repeating prior arguments and assertions regarding his qualifications or by generally disagreeing with the denial of his petition. To warrant reconsideration, the Petitioner must establish errors of law or policy (as documented by any relevant precedent decisions or other cited law or policy) or errors of fact (through a showing the decision was incorrect based on the record as it stood at the time of the prior decision). The Petitioner's statement in support of the current motion does not directly address the conclusions we reached in our prior decision or provide reasons for reconsideration of those conclusions.

As such, the motion does not meet all the requirements of a motion to reconsider, and 8 C.F.R. § 103.5(a)(4) requires dismissal of the motion.

[2] Evidence from after the filing date can properly be viewed in the context of showing that a given petitioner remains eligible for the benefit sought, but we need not take such evidence into consideration if the record does not show that the petitioner was already eligible at the time of filing.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the prior motion. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.